

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board)	CC Docket No. 96-45
on Universal Service)	

**COMMENTS
OF
SPRINT NEXTEL CORPORATION**

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Sprint Nextel Corporation (“Sprint Nextel”) hereby submits these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) August 17, 2005, Public Notice requesting comment on proposals to change the rules governing High-Cost Universal Service support.¹ Specifically, the Commission requests comment on four plans submitted by members of the Federal-State Joint Board on Universal Service (“Joint Board”) that would – among other things – modify the distribution methodology for High-Cost funds.

I. INTRODUCTION AND SUMMARY

Like many other competitive telecommunications providers, Sprint Nextel is extremely concerned about the recent rapid growth of the Universal Service Fund (“USF”) and, in particular, growth in the High-Cost portion of the Fund. The increasing demand on these funds, combined with the rising use of communications services – such as cable broadband – that do not contribute to the USF, has led to a disproportionate burden on carriers such as Sprint Nextel that are net payors into the Fund. Should this

¹ See Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission’s Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, FCC 05J-1 (rel. Aug. 17, 2005) (hereinafter “Notice”).

burden continue to increase at current growth rates, it will only lead to further arbitrage and market distortion between telecommunications services that pay into the USF, and those that do not.

Sprint Nextel is encouraged that all of the four proposals presented by the Joint Board acknowledge many of the recent changes in the U.S. telecommunications market, along with the danger of unchecked High-Cost Fund growth. For instance, Proposal B – presented by Joint Board Member Billy Jack Gregg – notes that “Universal Service deserves a fresh look in light of recent technological, market, regulatory and judicial developments.”² Similarly, Proposal C – submitted by Commissioner Robert Nelson – notes that the “dramatic decrease in traditional long distance wireline traffic and the increase in VoIP and the deployment of IP networks has changed the dynamics of USF so irrevocably that immediate attention to the issue is required.”³

Sprint Nextel supports efforts by both the Joint Board and the Commission to study and reevaluate the rules governing distribution of High-Cost funds. In particular, Sprint Nextel supports efforts to control the growth of the High-Cost Fund. Any rules adopted, however, must ensure that support is distributed nationally in a technologically and competitively neutral manner, as required by Section 254 of the Communications Act. With this in mind, Sprint Nextel believes the following elements are critical to any High-Cost Fund reform plan:

- All Eligible Telecommunications Carriers (“ETCs”) should have access to High-Cost Funds, and should not be segregated into separate funds based on technology or competitive status;

² Notice at 8.

³ *Id.* at 18.

- Per-Line Support – however calculated – should be fully portable;
- A forward-looking cost mechanism should continue to be developed;
- A national rate benchmark should be developed to address artificially low local service rates charged by rural LECs; and
- Distribution of federal High-Cost funds should continue to be subject to unified, federal control.

Sprint Nextel supports certain aspects of each of the proposals under consideration here. However, none of these proposals fully incorporates all of these critical principles. Therefore, while Sprint Nextel supports on-going efforts to rationalize distribution of federal High-Cost funds, the Joint Board should not recommend adoption of any of these four proposals in their current form.

II. HIGH-COST FUND REFORM PLANS MUST BE BASED ON PRINCIPLES OF COMPETITIVE AND TECHNOLOGICAL NEUTRALITY

Any effort to reform the High-Cost fund distribution methodology must conform to the requirements of Section 254 and existing Commission policy. This means that “reforms” cannot single out any technology or group of competitors for disparate or favored treatment. As the Rural Task Force noted during the course of its deliberations, “Section[s] 254(b) and 214(e) of the 1996 Act provide the statutory framework for a system that encourages competition while preserving and advancing universal service.”⁴ The Joint Board is also well aware of Section 254’s statutory mandate, as reflected by its statement in the *First Report and Order* that “universal service mechanisms and rules”

⁴ Rural Task Force, White Paper 5: Competition and Universal Service, at 8 (rel. Sept. 2000) (*available at* <http://www.wutc.wa.gov/rtf>) (hereinafter “White Paper 5”).

should “neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”⁵ This concept was reiterated in the *Ninth Report and Order*, where the Commission stated that “the same amount of support . . . received by an incumbent LEC should be fully portable to competitive providers.”⁶

The courts have also held that portability and technological neutrality are required by the language of Section 254, as well as the overall purpose of the 1996 Act. In *Allenco Communications, Inc. v. FCC*, the United States Court of Appeals for the Fifth Circuit stated that the Universal Service “program must treat all market participants equally – for example, subsidies must be portable – so that the market, and not local or federal regulators, determines who shall compete for and deliver services to consumers.”⁷

As a company that provides local, long-distance and wireless telecommunications services, Sprint Nextel recognizes that high cost telecommunications solutions should be based on the needs of consumers, and not limited to a particular technology. Accordingly, the Joint Board should focus on creating a reform framework that treats both existing and developing technologies in a fair and competitively neutral manner, and reject proposals that discriminate against discrete classes of technologies or competitors.

⁵ *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8801 (1997) (hereinafter “First Report and Order”).

⁶ *Federal-State Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration*, 14 RCC Rcd 20432, 20479 (1999) (hereinafter “Ninth Report and Order”).

⁷ 201 F.3d 608, 616 (5th Cir. 2000).

A. The Joint Board Should Reject Proposals to Create Separate “Funds” for Wireless Carriers

As noted above, one of the key requirements of Section 254 is that all qualified competitors have access to Universal Service funds so that consumers – not regulators – decide what technologies and services best serve their needs. Joint Board Proposal D, however, seeks to prohibit wireless eligible telecommunications carrier (“ETC”) access to the bulk of High-Cost USF funds.⁸ In lieu of access to that Fund, Proposal D would create a separate wireless “Portability Fund” that would “be available only to wireless carriers” and would apparently only fund improvements to “wireless coverage in underserved areas, with a particular emphasis on underserved areas with major roads.”⁹ This proposal violates Section 254, and should be rejected for two key reasons.

First, this proposal – as currently drafted – would cap wireless CETC support at relatively low levels while continuing to allow wireline ETCs to receive uncapped levels of support. In 2002, wireless providers contributed approximately 15 percent of total contributions to the USF.¹⁰ Under the current revenue-based contribution system, wireless providers now provide approximately 32 percent of all contributions to the USF,¹¹ and that figure will likely continue to rise in the near future. The “Portability

⁸ See Notice at 26-27.

⁹ *Id.* at 27.

¹⁰ See Public Notice, *Commission Seeks Comment on Staff Study Regarding Alternative Contribution Methodologies*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, NSD File No. L-00-72, at 6 (rel. Feb 26, 2003).

¹¹ See Federal Communications Commission, *Rollup of February 1, 2005 FCC Form 499-Q Filings Detailed Revenues by Type of Carrier* (available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-

Fund” proposal, however, would cap the total amount of the Fund at \$1 billion for five years.¹² This, as the authors of the “Portability Fund” proposal acknowledge, is “substantially less than the approximately \$1.8 billion that the wireless industry [currently] contributes to USF,”¹³ and is much less than the amount that wireless providers will contribute in even the very near future. Accordingly, this proposal would essentially lock wireless carriers in as “net payors” for at least five years, and prohibit wireless carriers from competing for a large portion of available High-Cost funds.

Second, the “Portability Fund” proposal would impose additional geographic restrictions on wireless High-Cost funding that do not exist for wireline carriers. Rather than allowing wireless carriers to compete in all High-Cost areas, Proposal D would apparently restrict wireless ETC funding only to “unserved areas” and “particularly unserved areas with major roads.”¹⁴ Ostensibly, this prong of the proposal is based on the belief that rural wireless networks generally serve highway travelers, rather than actual residents of the rural area. This view, however, ignores the fact that wireless services have proven extremely popular with people living in rural areas due to the unique characteristics (such as mobility) of wireless service. This proposal also would deprive many rural residents of the opportunity to choose a technology or provider that

State Link/IAD/quarterly_roll-upsasof031105.pdf) (projecting Second Quarter 2005 wireless service provider interstate and international attributable revenues of approximately \$5.9 billion out of total industry-reported interstate and international end user revenues of \$18.8 billion).

¹² See Notice at 27.

¹³ *Id.*

¹⁴ *Id.*

will serve best their individual needs. Such a concept strikes at the core of Section 254, which mandates portability and technological neutrality. Moreover, the proposed geographic limitation would be administratively burdensome, and subject to constant dispute: “unserved areas with major roads” are not defined; it is not clear what standards would be used to determine such areas; and there are no provisions for posting or updating the list of such areas. Because of the statutory and administrative problems associated with this approach, the geographic restrictions in Proposal D must be rejected.

B. Per-Line Support Must Remain Portable to CETCs

Certain proposals in the Joint Board Notice also seek to limit the portability of per-line support to wireless CETCs: Proposals B and D propose that per-line wireless CETC support be limited to that carrier’s “costs,”¹⁵ and Proposal C appears to suggest that states could flatly prohibit the portability of High-Cost funds to CETCs in some areas.¹⁶ These proposals are not technologically or competitively neutral, and should be rejected.

As further detailed below, Sprint Nextel supports Joint Board efforts to review the current High-Cost distribution methodology, and consider a new methodology that would incorporate forward-looking cost inputs. Any distribution methodology adopted, however, must ensure that the same level of per-line support offered to an incumbent ETC in a given study area is portable to a wireless CETC. Proposals that do not provide full portability of funds only exacerbate inefficiencies in the current system by allowing incumbent ETCs to retain inefficient operating practices, and distort market signals that

¹⁵ See *id.* at 9 (Proposal B) and 26-27 (Proposal D).

¹⁶ *Id.* at 15.

could allow for new competitors in those markets. Such market distortions only serve to impede effective competition and harm consumers, in direct contravention of both the spirit and letter of Section 254.

C. A Per Line Support “Freeze” on Competitive Entry Is Competitively Neutral and Will Restrain High-Cost Fund Growth

A far better option to reduce High-Cost fund growth is a study area per-line cap on CETC entry. A study area “freeze” would cap the total level of support flowing to an incumbent carrier (and, by extension, to a CETC) once a CETC enters a study area. Thereafter, per-line support could be adjusted based on certain index factors (such as teledensity), rather than changes in the rural carrier’s embedded costs. This approach was recommended by the Rural Task Force during the course of its deliberations,¹⁷ and has been endorsed by a number of carriers – including both legacy Sprint and legacy Nextel – in recent years. In addition, it is a critical component of Proposal B, which endorses the use of a study area “freeze” upon competitive entry as a key component of a short-term plan to reform the High-Cost framework. Accordingly, Sprint Nextel encourages the Joint Board to again investigate the study area “freeze” concept – along with other competitively neutral reform proposals – and reject proposals that discriminate against certain categories of competitors.

¹⁷ See *Federal-State Joint Board on Universal Service, Recommended Decision*, 16 FCC Rcd 6153, 6161 (2000) (recommending that the “Commission ‘freeze’ per-line high-cost loop support directed to a rural study area if a competitive eligible telecommunications carrier has been designated and begins providing service in the study area”).

III. JOINT BOARD EFFORTS TO MOVE TO A FORWARD-LOOKING COST METHODOLOGY ARE ENCOURAGING BUT STILL REQUIRE FURTHER STUDY

At least three of the Joint Board proposals state that a transition to a forward-looking cost model for incumbent ETCs should be studied as part of any High-Cost fund reform.¹⁸ Sprint Nextel supports these efforts to move to a forward-looking cost methodology for determining High-Cost USF support for two critical reasons. First, embedded costs incurred under rate-of-return regulation may reflect inefficiencies. Forward-looking costs, on the other hand, do not. Second, the use of a forward-looking cost model sends the correct signal to new entrants regarding the actual cost of entering that market. Before this transition can occur, however, Sprint Nextel believes that the Joint Board – and the FCC – must work to develop a forward-looking model that can calculate costs accurately for rural carriers. As further detailed below, there are legitimate questions as to whether the FCC’s forward-looking cost model – in its current form – is capable of accurately calculating certain rural carrier costs.

As an initial matter, inputs to a cost calculation model often vary significantly depending on the size of the company being modeled. For instance, inputs that are accurate for a non-rural LEC serving millions of access lines in several states are unlikely to be representative of costs incurred by a rural LEC that serves fewer than 100,000 lines in a single state. The current model’s inputs reflect the scale and purchasing power of the country’s largest LECs, rather than the purchasing power that exists for medium or small-

¹⁸ See Notice at 3-4 (Proposal A); 8 (Proposal B); 21 (Proposal D).

sized rural carriers.¹⁹ New inputs will have to be modeled in this area in order to ensure accurate cost calculations.

In addition, it is critical to ask how the current model's approach to forward-looking cost estimation should be updated. The current model calculates the cost of outside plant -- fiber transport rings, digital switches, fiber feeder, digital loop carriers, copper distribution, and copper drop, all reflecting various assumptions (such as an 18,000-foot carrier serving area limit) -- based on network configurations designed over ten years ago. It is reasonable to assume that today's network configurations are somewhat different to wring out additional efficiencies, and the cost model must be adaptable enough to reflect new and developing technologies.

As stated above, Sprint Nextel supports efforts to move from an embedded cost model to a forward-looking model as the basis for High-Cost Fund support. Prior to implementing such a change, however, the Joint Board and the FCC must carefully study the various inputs required for a successful forward-looking model.

IV. THE JOINT BOARD SHOULD RECOMMEND SOME FORM OF RATE BENCHMARK TO ADDRESS ARTIFICIALLY LOW RURAL LEC RATES

All four of the proposals detailed in the Joint Board Notice endorse -- on some level -- the concept of rate benchmarks to control High-Cost Fund distributions.²⁰ Sprint Nextel supports the use of rate benchmarks to ensure that High-Cost Funds are used to

¹⁹ The current forward-looking cost model also fails to address (among other things) the scale and purchasing power of wireless CETCs. To the extent that the Joint Board explores proposals based per-line support on the "most efficient" technology, it will have to determine a suitable forward-looking cost model for wireless CETCs as well.

²⁰ See Notice at 4-5 (Proposal A); 9 (Proposal B); 15-16 (Proposal C); 22 (Proposal D).

provide rates that are “affordable” and “reasonably comparable” to the rates offered in non-rural areas, and not as subsidies that allow certain rural LECs to charge below-market rates.

As Sprint Nextel has noted in previous comments, a number of rural LECs currently are able to charge local service rates that are far below the nationwide average urban rate because of the extraordinary High-Cost Fund support they receive. In these areas, the use of a national rate benchmark (perhaps at 100% to 125% of the nationwide urban rate) combined with a requirement limiting High-Cost support for carriers with end-user rates below that benchmark would substantially reduce excess High-Cost funding and limit further High-Cost Fund growth. Accordingly, Sprint Nextel supports further Joint Board action to develop an appropriate national rate benchmark, and reduce excess High-Cost Fund distributions to rural LECs with end user rates well below the national urban average rate.

At the same time, however, the Joint Board should recognize that rural LECs are entitled to a reasonable opportunity to make up the lost revenues occasioned by this lower High-Cost Fund distribution by raising their retail rates. To that end, the Joint Board should continue to explore cooperative efforts with state commissions to rebalance retail rates in areas where the end user cost is substantially below the national average urban rate. This rebalancing would further the public interest by reducing unneeded government transfer payments to those who can afford to pay reasonable rates for their telephone service.

V. ANY REFORM PLAN MUST MAINTAIN FEDERAL CONTROL OVER FUND DISTRIBUTION

Under Section 254, the FCC is charged with the task of maintaining a national Universal Service system that treats all ETCs in a technologically and competitively neutral manner. Notwithstanding these instructions, however, all of the Joint Board proposals contain provisions that would transition the allocation of High-Cost funds from the Universal Service Administrative Company (“USAC”), and instead funnel High-Cost distributions to ETCS through some type of State Allocation Mechanism (“SAM”). Under Proposal A, for instance, “state accounts” would be set up at USAC, and USAC would then distribute funds according to allocation decisions made by the state commission.²¹ Proposal C would essentially provide High-Cost “block grants” to states, and allow them a very wide degree of discretion in distributing the funds – including the right to exclude certain CETCs from Fund distributions.²² Sprint Nextel opposes efforts to delegate High-Cost Fund distribution to a SAM, or “block grant” High-Cost Funds directly to a state commission or other state entity. If adopted, such a scheme could result in the exclusion of certain technologies offering supported services in some states. In addition, “block grants” or further devolution of fund distribution responsibilities to state commissions will only serve to increase the administrative burdens associated with the High-Cost program.

²¹ *Id.* at 3.

²² *Id.* at 14-15.

A. Proposals to Give State Commissions Authority to Make High-Cost Funding Decisions Violate Section 254

Proponents of a “block grant” system or the “SAM” allocation method claim that this distribution mechanism does not raise any “delegation of authority” issues or concerns about equitable funding of services because the distribution of funds would occur pursuant to FCC guidelines. These proponents, however, provide no detail on how much latitude such FCC guidelines would provide, or how they would be enforced. Proposal D, for instance, assumes that under a SAM allocation system, state commissions would have “what amounts to a power of appointment (or allocation) over federal high-cost funds,” and could support carriers through “a mix of state and federal universal service funds.”²³ Proposal B appears to go even further and would allow “states with more discretion to distribute the funds in accordance with the guidelines” – up to and including the power to “determine that only one carrier could be funded in a [] rural area.”²⁴

Both proposals – and others that would delegate critical High-Cost distribution decisions to state entities – are flawed and should be rejected. While there is merit in encouraging closer coordination of federal and state Universal Service funds, the Joint Board should not support proposals that merely delegate federal USF distribution responsibilities to state commissions. A number of state universal service funds currently do not include wireless providers in either the contribution or distribution process. If federal USF contributions were turned over to these state funds, it raises the real

²³ *Id.* at 20.

²⁴ *Id.* at 15.

possibility that wireless providers would be unable to receive funding due to the imposition of state rules governing either entry or ongoing conditions of service. In fact, Proposal D – as currently drafted – actually endorses such an approach.

Furthermore, even where state commissions allow wireless providers to receive “commingled” USF funds, it is almost certain that distribution rules would vary among states. Thus, one state might allow a wireless carrier to receive High-Cost funding, while another state might bar a wireless carrier from receiving funds to support the exact same type of service in a study area with very similar characteristics. Either approach – whether a flat barrier to funding or a system that allows states to “pick and choose” – discriminates on technological factors, and must be rejected as inconsistent with Section 254(b)(5), which requires that universal service mechanism be “specific” and “predictable.” In addition, there is a substantial question whether it would be legally permissible for the FCC to delegate such authority to the states.²⁵

B. State Control or Distribution of Federal High-Cost Funds Would Increase Administrative Burdens

State control of federal High-Cost funds – either through a SAM process or by block grants – would also almost certainly increase the FCC’s administrative and oversight burdens. In the *First Report and Order*, the FCC considered the option of allowing state commissions to administer federal Universal Service funds, including certain proposals to “make individual state commissions or groups of state commissions

²⁵ See, e.g., *United States Telecom Assoc. v. FCC*, 359 F.3d 554, 565-66 (D.C. Cir. 2004) (noting that “delegation to outside parties increases the risk that these parties will not share the agency’s ‘national vision and perspective,’ . . . and thus may pursue goals inconsistent with those of the agency *and the underlying statutory scheme*”) (emphasis added).

responsible for administering the collection and distribution of funds, operating under plans approved by the Commission.”²⁶ The FCC rejected these proposals, however, finding that “administration by a central administrator would be most efficient and would ensure uniform application of the rules governing collection and distribution of funding for universal service support mechanisms nationwide.”²⁷

Sprint Nextel believes that there is no reason to reverse that determination now. Any move to give state commissions – or some other state administrator – control of High-Cost funds will almost certainly result in highly variable rules concerning the distribution of funds. In addition, the use of 50 different state administrators, as opposed to one centralized administrator, will dramatically increase the FCC’s oversight and audit responsibilities. As the FCC works to root out fraud and abuse in the Universal Service program, any move that would hurt the Commission’s effort in the area is exactly the wrong step.

VI. CONCLUSION

Sprint Nextel appreciates the Joint Board’s efforts to reform the High-Cost distribution mechanism, and looks forward to working with the Joint Board on a reform plan that is fair to all stakeholders.

²⁶ *First Report and Order*, 12 FCC Rcd at 9213.

²⁷ *Id.* at 9214.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMMENTS OF SPRINT NEXTEL CORP.** was filed by electronic mail and copies sent by electronic mail on this the 30th day of September 2005, to the below-listed parties:


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